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10/501,247	07/12/2004	Detlev Neuland	01/090LTS	5234

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EXAMINER	
HELM, CARALYNNE E	
ART UNIT	**PAPER NUMBER**
4173	
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10/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/501,247	NEULAND ET AL.	
	Examiner	Art Unit	
	Caralynne Helm	4173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-6 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-6 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 2 pages.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Dunn et al. (US Patent No. 4,871,559).

Dunn et al. teach a method of sterilizing packaging materials for food, exemplified in the context of a manufacturing process line (see column 1 lines 26-31 and figures 1-6). The process of sterilization results in the removal of live bacteria or other microorganisms. Here, Dunn et al. teach that a material of interest is subjected to one or multiple pulses of ultraviolet light such that the superficial layer of the material is elevated in temperature to 100C (see column 7 lines 3-11; instant claim 1). In this way, the localized heat removes living surface microorganisms and active enzymes whose presence is detrimental to the food to be contained (see column 1 lines 43-49 and column 7 lines 15-19; instant claim 2). Dunn et al. go on to teach that typical packaging (carrier) materials include both foil and paper (see column 13 lines 11-15; instant claim 3). Dunn et al. thereby anticipate claims 1-3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kizawa et al. in light of the Cookware Care section of the DuPont Teflon® website.

Kizawa et al. teach a method of making a film containing an active pharmaceutical agent that adheres to a mucous membrane, delivering its contained pharmaceutical (see abstract and column 2 lines 14-35; instant claims 4 and 6). Kizawa et al. teach the mixture of the film base agents in water (see column 5 lines 35-43; instant claim 5). In addition, Kizawa et al. teach the molding of the film on a Teflon® plate followed by its removal after the inclusion of additional ingredients and partial drying (see column 5 line 56-column 6 line 6; instant claim 4). Kizawa et al. does not teach the cleaning (removal of undesired substances) of the Teflon® plate after the removal of the film.

The Cookware Care section of the DuPont Teflon® website teaches the cleaning of Teflon® surfaces. More specifically, it states that after each use, the surface should be washed with hot, soapy water (see lines12-13; instant claims 1 and 4). This use of heated water, with added mechanical agitation if needed, is a thermal treatment sufficient to remove the undesired material (see lines 13-14; instant claims 1 and 4). The cleaning process prepares the surface for repeated use. Thus one of ordinary skill in the art the time the invention was made would have found it obvious to employ this cleaning procedure following the removal of the film from the Teflon® molding plate in the invention of Kizawa et al. Therefore, claims 1 and 4-6 are obvious over Kizawa et al. in light of the Cookware Care section of the DuPont Teflon® website.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting

rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 10-12 of U.S. Patent No. 7,232,500. Although the conflicting claims are not identical, they are not patentably distinct from each other because the thermal treatment employed in the instant claims for the removal of undesired substances from a carrier material previously used to create a film, is also employed in patent '500 when the transfer support web, which was used to produce a film (referred to as "composite of intermediate support layer and humidity adjusted coating" in claim 1 of '500), is dried with hot air (to remove the solvent cleaning solvent/detergent). Thus, the invention in patent 7,232,500 is not distinct from the invention of the instant claims.

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